IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No.539 of 2007.

Date of decision: 3.8.2007.

State of H.P. ……. **Petitioner**

Vs.

Kunal …. **Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the Petitioner : **Mr. M.L. Chauhan, Additional Advocate General.**

For the Respondent : **None.**

Kuldip Singh, Judge. **(Oral)**

The prosecution case is that PW-4 Ram Bahadur on 3.3.2004 at about 12.45 P.M. was going to a Medical Store at Kotkhai to fetch tea glasses. In the meanwhile, one scooter came from his left side, he moved to his right side to avoid accident but in the meanwhile accused came driving motorcycle bearing No.HP-03C-8009 from right side and hit him, dragging him over a distance of 4-5 feet. The accused did not blow horn nor he was wearing helmet when he knocked down the complainant Ram Bahadur. The statement of complainant was recorded under Section 154 Cr.P.C., on the basis of which an FIR Ex.PW-9/A was recorded and the case was investigated by ASI Vikram Chauhan, PW-9 and after completion of investigation challan was submitted against the accused.

Whether the reporters of the local papers may be allowed to see the Judgment?

2. The prosecution has examined 9 witnesses in all. The accused was examined under Section 313 Cr.P.C. and he denied the accident.

3. The Judicial Magistrate Ist Class, Theog convicted the accused on 27.7.2005 under sections 279, 337 IPC and Section 129 of the Motor Vehicles Act. He was sentenced to undergo simple imprisonment for one month and to pay a fine of Rs.500/- for the commission of offence punishable under Section 279 IPC and in default of payment of fine to further undergo simple imprisonment for 7 days, for commission of offence under Section 337 IPC, he was sentenced to undergo simple imprisonment for one month and to pay fine of Rs.200/- and in default of payment of fine to further undergo simple imprisonment for five days and for commission of offence punishable under Section 129 of the Motor Vehicles Act, he was sentenced to pay a fine of Rs.50/- and in case of default of payment of fine to undergo simple imprisonment for one day. The accused filed appeal against judgment dated 27.7.2006. The learned Sessions Judge, Shimla has acquitted the accused on 19.5.2007. The State has filed petition, seeking leave to file appeal against judgment dated 19.5.2007.

4. PW-4 Ram Bahadur was walking on the road, a scooter came on his left side and to avoid the scooter Ram Bahadur moved to another side and all of a sudden came before motorcycle No.HR.03C-8009. It cannot be said that the accused was driving the motorcycle rashly and negligently at the time of the accident.

5. The accused has denied the accident in question in his statement under Section 313 Cr.P.C. Therefore, another question involved is whether in fact motorcycle No. HR-03C-8009 was involved in the accident. Complainant Ram Bahadur has admitted that he does not know the registration number of the motorcycle. PW-1 Partap Singh a witness of recovery memo of motorcycle has stated in his cross-examination that he has not seen the motorcycle on the spot. Therefore, involvement of the motorcycle in the accident is doubtful. The learned Sessions Judge has taken a possible view from the material on record and rightly acquitted the accused. Hence, leave to appeal is rejected.

(Kuldip Singh)
Judge.

August 3, 2007
(sks)